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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations by the Human Rights Committee

COLOMBIA

1. The Committee considered the fourth periodic report of Colombia (CCPR/C/103/Add.3 and HRI/CORE/1/Add.56) at its 1568th, 1569th, 1570th and 1571st meetings, on 31 March and 1 April 1997, and adopted 1/ the following concluding observations:

A. Introduction

2. The Committee welcomes the fourth periodic report submitted by the State party and the opportunity to resume its dialogue with Colombia, through a delegation composed of officials from various sectors of the administration. Although the Committee notes with regret that the report submitted by the State party lacks sufficient information on the practical situation with respect to the enjoyment of human rights by the population and on the implementation of the provisions of the Covenant and the relevant national legislation, it expresses its appreciation to the delegation for the frank answers it provided to its questions, which enabled it to have a clearer view of the overall human rights situation in the country. The fact that the delegation acknowledged to a certain extent the difficulties encountered in the implementation of the Covenant in the country is appreciated by the Committee.

1/ At its 1583rd meeting, on 9 April 1997.

3. The information submitted by a wide range of non-governmental organizations also assisted the Committee in its understanding of the human rights situation in the State party.

B. Factors and difficulties impeding the implementation of the Covenant

4. The Committee notes that Colombia continues to suffer from widespread armed conflict, in the context of which gross and massive human rights violations have occurred and continue to be perpetrated. The Committee also notes that recent efforts to restart peace negotiations have yet to bear fruit.

C. Positive aspects

5. The Committee welcomes the recent establishment of an office of the High Commissioner/Centre for Human Rights in Colombia, as well as the ratification by Colombia of the Additional Protocol II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts.

6. The Committee further welcomes the creation of a number of institutions and offices to protect and promote human rights, such as the Office of the Ombudsman, the Department for Human Rights within the Office of the Public Prosecutor and the Division for Human Rights within the Office of the Attorney-General, the establishment by the Office of the Public Prosecutor of permanent offices on human rights in the main cities of the country, as well as the setting up of programmes concerning women and gender equality, formulated by the National Economic and Social Policy, and the creation of institutional structures aiming at the promotion of women's rights, such as the Committee for Coordination and Monitoring of Policies to Combat Discrimination and the Office of the Presidential Adviser for Youth, Women and the Family.

7. The Committee expresses its appreciation for the recent jurisprudence of the Constitutional Court regarding the status of international human rights instruments, which gives the latter a status equal to that of the Constitution.

8. The Committee welcomes the adoption of a new Police Code, which includes guidelines and binding principles concerning the use of force and weapons by the police. The restructuring of the police, with a view to increasing the professionalism of police officials and improving relationships between the police and the population, is also welcomed. Furthermore, the adoption, in the framework of this restructuring, of decrees with respect to disciplinary measures in case of unlawful behaviour of police officials, is appreciated.

9. The Committee expresses its appreciation for the establishment of a Commission of Inquiry to deal with complaints concerning forced disappearances, which provides for protective measures for complainants and witnesses. The establishment of a national registry listing disappeared people, together with the creation of a commission for the follow-up of cases of forced disappearances and composed, among others, of the Public Prosecutor,

the Ombudsman and representatives of non-governmental organizations, is viewed as positive steps in the struggle against forced disappearances.

10. The Committee notes with appreciation the creation of remedies for the violation of basic rights of individuals, such as the tutela action, established by article 86 of the Constitution and the relevant decrees, habeas corpus and habeas data.

11. The Committee also welcomes the adoption of legislation which establishes a mechanism for the compensation of victims of human rights violations in accordance with decisions adopted by the Committee under the Optional Protocol to the Covenant and by the Inter-American Commission on Human Rights.

12. The Committee notes with satisfaction that victims of human rights abuses committed by members of the armed forces may now be represented as civil parties during proceedings before military courts.

13. With respect to the prevailing domestic violence, the Committee welcomes the adoption of legislation which provides for accelerated judicial proceedings and immediate protective measures for victims of such violence.

D. Principal subjects of concern

14. The Committee notes with concern that the suggestions and recommendations it addressed to the Government at the end of the consideration of the previous report (see CCPR/C/64/Add.3 and A/47/40, paras. 390-394) have not been implemented.

15. The Committee deplores the fact that gross and massive human rights violations continue to occur in Colombia and that the level of political and criminal violence is still very high. In particular, the Committee deplores extrajudicial executions, murders, torture and other degrading treatment, forced disappearances and arbitrary arrests, carried out by members of the armed forces, the police and paramilitary and guerrilla groups. Journalists, human rights activists, trade union and political leaders, teachers, members of indigenous populations and judges appear to be specifically targeted.

16. The Committee also deplores the fact that so-called "social-cleansing" operations, targeting street children, homosexuals, prostitutes and petty delinquents, continue to be carried out and that appropriate and effective action has not yet been taken to ensure the full protection of the rights of these groups, especially of their right to life.

17. The Committee is deeply concerned at the evidence that paramilitary groups receive support from members of the military. The recently adopted decree which would have the effect of legalizing the constitution of armed civilian groups (the so-called Rural Security Cooperatives) would seem to aggravate this situation.

18. The Committee notes with great concern that impunity continues to be a widespread phenomenon and that the concept of service-related acts has been broadened by the Higher Adjudication Council to enable the transfer from

civilian jurisdiction to military tribunals of many cases involving human rights violations by military and security forces. This reinforces the institutionalization of impunity in Colombia since the independence and impartiality of these tribunals are doubtful. The Committee wishes to point out that the military penal system lacks many of the requirements for a fair trial spelled out in article 14, for example the amendments to article 221 of the Constitution allowing active duty officers to sit on military tribunals and the fact that members of the military have the right to invoke as defence the orders of a superior.

19. The Committee is concerned that the military and members of security or other forces allegedly continue to exercise special powers over civilians and civilian authorities, including judicial authorities, granted to them through the establishment of Special Public Order Zones by decrees no longer in force. The Committee is particularly concerned by the fact that the military exercise the functions of investigation, arrest, detention and interrogation.

20. The Committee notes with concern that threats against members of the judiciary compromise the independence and impartiality of the judiciary, which are essential to comply with the rights provided for in article 14 of the Covenant. Moreover, the Committee notes that the length of judicial proceedings creates an unacceptable backlog of cases, including cases of human rights abuses.

21. Although the Committee notes the forthcoming dismantlement of the regional judicial system, it nevertheless emphasizes that this judicial system, which provides for faceless judges and anonymous witnesses, does not comply with article 14 of the Covenant, particularly paragraph 3 (b) and (e), and the Committee's General Comment 13 (21).

22. The Committee notes with concern that there is a significant gap between the legal framework and reality in the field of human rights. It notes in particular that although a large number of laws and regulations have recently been adopted to protect human rights and provide remedies in cases of abuse, there has been little noticeable improvement in the situation of human rights in practice.

23. The Committee expresses its deep concern at the recent proposals for constitutional reform aiming at suppressing time-limits on states of emergency, eliminating the powers of the Constitutional Court to review the declaration of a state of emergency, conceding functions of the judicial police to military authorities, adding new circumstances under which a state of emergency may be declared, and reducing the powers of the Attorney-General's Office and the Public Prosecutor's Office to investigate human rights abuses and the conduct of members of the military, respectively. If these texts were to be adopted, they would raise serious difficulties with regard to article 4 of the Covenant.

24. The Committee expresses its concern over the situation of women who, despite some improvements, continue to be subject of de jure and de facto discrimination in all spheres of economic, social and public life. It notes in this regard that violence against women remains a major threat to their

right to life and needs to be more effectively addressed. It is also concerned at the high mortality rate of women resulting from clandestine abortions.

25. The Committee also expresses its concern that the resort to declarations of states of emergency is still frequent and seldom in conformity with article 4, paragraph 1, of the Covenant, which provides that such declaration may be made only when the life and existence of the nation is threatened. The Committee is also concerned that, despite constitutional and legal guarantees, enjoyment of the rights provided for in article 4, paragraph 2, of the Covenant is not fully protected in such circumstances and that under article 213 of the Constitution, the Government may issue decrees suspending any laws considered to be incompatible with the state of disturbance.

26. The Committee expresses its concern at appalling prison conditions, the most serious of which is the serious problem of overcrowding, as well as at the lack of measures taken to date to address this problem.

27. The Committee expresses its deep concern at the situation of children in Colombia and at the lack of adequate measures to protect their rights under the Covenant. In this respect, the Committee notes that much remains to be done to protect children from violence within the family and the society at large, from forced recruitment by guerrilla and paramilitary groups and from employment below the legal minimum age, and specifically to protect street children from being killed or otherwise abused by vigilante groups and security forces.

28. The Committee notes that although positive measures have been taken by the Government, members of indigenous communities and of the black minority continue to suffer discrimination and that they do not fully enjoy their rights provided for in article 27 of the Covenant.

29. Lastly, the Committee expresses concern that the decisions on the admissibility and the merits of certain cases submitted to the Committee under the Optional Protocol to the Covenant have again been questioned by the Government of Colombia when it was presented with the views adopted by the Committee thereunder.

E. Suggestions and recommendations

30. The Committee urges the Government to redouble its efforts towards the setting up of a process of national reconciliation, with a view to bringing lasting peace to the country.

31. The Committee urges that appropriate and effective measures be taken to ensure that human rights are respected by members of the army, the security forces and the police. The Committee strongly recommends that support given by military personnel or security forces to paramilitary groups and operations be investigated and punished, that immediate steps be taken to disband paramilitary groups and that consideration be given to repealing the presidential decree legalizing the constitution of Rural Security Cooperatives.

32. The Committee recommends that in order to combat impunity, stringent measures be adopted to ensure that all allegations of human rights violations are promptly and impartially investigated, that the perpetrators are prosecuted, that appropriate punishment is imposed on those convicted and that the victims are adequately compensated. The permanent removal of officials convicted of serious offences and the suspension of those against whom allegations of such offences are being investigated should be ensured.

33. The Committee recommends that special measures be adopted, including protective measures, to ensure that members of various social sectors, particularly journalists, human rights activists, trade union and political leaders, teachers, members of indigenous populations and judges, are able to exercise their rights and freedoms, including freedom of expression, assembly and association, without intimidation of any sort. The Committee also urges the authorities to take stringent measures to ensure full protection of the rights of victims of "social cleansing", in particular their rights under articles 6 and 7 of the Covenant.

34. The Committee also urges that all necessary steps be taken to ensure that members of the armed forces and the police accused of human rights abuses are tried by independent civilian courts and suspended from active duty during the period of investigation. To this end, the Committee recommends that the jurisdiction of the military courts with respect to human rights violations be transferred to civilian courts and that investigations of such cases be carried out by the Office of the Attorney-General and the Public Prosecutor. More generally, the Committee recommends that the new draft Military Penal Code, if it is to be adopted, comply in all respects with the requirements of the Covenant. The public forces should not be entitled to rely on the defence of "orders of a superior" in cases of violation of human rights.

35. The Committee recommends that all necessary measures be taken by the authorities to ensure that the gap between laws protecting fundamental rights and the situation of human rights in practice is reduced. To this effect, the Committee recommends that educational and training programmes be devised so that all segments of the population, in particular members of the army, the security forces, the police, judges, lawyers and teachers, can develop a culture of respect of human rights and human dignity.

36. The Committee recommends that the recently proposed constitutional reforms, referred to in paragraph 23 above, be withdrawn.

37. The Committee recommends that the State party review its laws and take measures to ensure full legal and de facto equality for women in all aspects of social, economic and public life, including with respect to their status within the family. In this regard, priority should be given to protecting women's right to life by taking effective measures against violence and by ensuring access to safe contraception. Measures should be taken to prevent and eliminate persisting discriminatory attitudes and prejudices against women, notably through education and information campaigns.

38. The Committee reiterates its views that a state of emergency should not be declared unless the conditions set out in article 4 of the Covenant apply and the declaration required under the said article is made. Constitutional

and legal provisions should ensure that compliance with article 4 of the Covenant can be monitored by the courts. The application of decrees adopted under article 213 of the Constitution and their non-application at the end of the emergency period should be closely monitored.

39. The Committee stresses the obligation of the State party under article 10 of the Covenant to ensure that all persons deprived of their liberty are treated humanely and with respect for the inherent dignity of the human person. With particular regard to the problem of overcrowding, the Committee suggests that the adoption of alternative sentencing measures which would allow some convicted persons to serve their sentences in the community be considered and that greater resources be committed to enlarge the capacity and improve the conditions of the penitentiary system.

40. The Committee urges that the regional judicial system be abolished and that the Government of Colombia ensure that all trials are conducted with full respect for the safeguards for a fair trial provided for in article 14 of the Covenant.

41. The Committee recommends that the Government put an end to the de facto exercise by the military of powers in the Special Public Order Zones established by decrees which are no longer in force.

42. The Committee urges the Government to adopt effective measures to ensure the full implementation of article 24 of the Covenant, including preventive and punitive measures in respect of all acts of child murder and assault and protective, preventive and punitive measures in respect of children caught up in the activities of guerrilla and paramilitary groups. The Committee also specifically recommends that effective measures be taken to eliminate employment of children and that inspection mechanisms be established to this effect.

43. The Committee stresses the duty of the State party to ensure that every child born in Colombia enjoys the right, under article 24, paragraph 3, of the Covenant, to acquire a nationality. It therefore recommends that the State party consider conferring Colombian nationality on stateless children born in Colombia.

44. The Committee recommends that further measures be adopted to ensure that the rights of members of indigenous populations and the black minorities under the Covenant, in particular articles 2, paragraph 1, 26 and 27, are protected. The Committee particularly stresses the importance of education and urges the Government to take appropriate measures to reduce the illiteracy rate among these groups.

45. The Committee recommends that the report of the State party, together with the concluding observations adopted by the Committee, be widely disseminated.

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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding Observations of the Human Rights Committee

PORTUGAL (MACAU)

1. At its 1476th and 1477th meetings, held on 4 April 1997, the Human Rights Committee considered the third periodic report of Portugal relating to Macau (CCPR/C/70/Add.9) and adopted 1/ the following observations:

A. Introduction

2. The Committee welcomes the presence of a high-level delegation, which included several officials of the Macau government. It expresses its appreciation to the representatives of the State party for the high quality of the report, abundance of additional information and detailed and frank answers provided in response to the oral and written questions posed and comments made by the Committee during its consideration of the report. The Committee notes with satisfaction that such information enabled it to engage in a highly constructive dialogue with the State party.

B. Factors relating to reporting obligations under the Covenant

3. The Committee notes that given the late extension of the Covenant to Macau, the Sino-Portuguese Joint Declaration and Exchange of Memoranda of 13 April 1987 does not refer to it and merely states that the laws currently in force in Macau will remain basically unchanged and that all rights and freedoms of the inhabitants and other persons in Macau, including the rights

of the person, freedoms of speech, of the press, of assembly, of association, of travel and movement, to strike, of choice of occupation, to undertake academic research, of religion and belief and of communication and the right t o own property will be ensured by law in the Macau Special Administrative Region. This was followed by a Memorandum of Understanding between the People's Republic of China and the Government of Portugal, signed by their respective Ambassadors, for extension of the Covenant to Macau with reservations, and thereafter by resolution 41/92 of the Assembly of the Portuguese Republic of 31 December 1992, stipulating that the provisions of the Covenant were extended to Macau with certain reservations, particularly in regard to article 12, paragraphs 4 and 13. The Committee notes that article 40 of the Basic Law of the Macau Special Administrative Region of the People's Republic of China, adopted by the People's Congress on 31 March 1993, states that the provisions of the Covenant shall continue in force after 19 December 1999 and shall be implemented through the laws of the Macau Special Administrative Region.

4. Accordingly, the Sino-Portuguese Joint Declaration, read in conjunction with the Memorandum of Understanding and the Basic Law, appears to provide a sound legal basis for the continued protection in Macau after 19 December 1999 of the rights specified in the Covenant. The Committee, moreover, wishes to reiterate its long-standing position that human rights treaties devolve with territory, and that States continue to be bound by the obligations under the Covenant entered into by the predecessor State. Once the people living in a territory find themselves under the protection of the International Covenant on Civil and Political Rights, such protection cannot be denied to them merely on account of the dismemberment of that territory or its coming within the jurisdiction of another State or of more than one State. 2/ Consequently, the reporting requirements under article 40 of the International Covenant on Civil and Political Rights will continue to apply and the Human Rights Committee expects to receive and review reports in relation to Macau after 19 December 1999.

C. Positive aspects

5. The Committee welcomes the fact that the death penalty has been abolished in Macau, including for military crimes. In this context, it notes with appreciation that the domestic law as interpreted by the Superior Court of Justice prohibits extradition to a country where the person concerned may be sentenced to death.

6. The Committee notes with appreciation that strict safeguards exist in the Organic Statute of Macau with regard to the declaration of a state of siege or state of emergency and that non-derogable rights under article 4, paragraph 2, of the Covenant may under no circumstances be derogated from.

7. It is also noted with appreciation that under article 30 of the Portuguese Constitution persons deprived of their liberty are entitled to continue to enjoy their fundamental rights, save for those limitations that are inherent in their imprisonment.

8. The Committee welcomes the efforts being made by the authorities to disseminate information on human rights to members of the judiciary, civil servants, teachers and the public in general.

9. The Committee notes with appreciation that under article 22 of the Portuguese Constitution, read in conjunction with article 2 of the Organic Statute of Macau, State agencies and public bodies are held liable for actions or omissions resulting in violations of human rights.

10. The Committee welcomes the setting up of new institutions and offices to protect human rights, such as the Public Information and Assistance Centre and the High Commission against Corruption and Administrative Illegality.

D. Principal subjects of concern

11. The Committee notes with concern that, while the majority of the population is Chinese-speaking, official charge forms and charge sheets, as well as court documents and decisions, are in Portuguese only, although efforts are being made to make Chinese versions available to the people.

12. The Committee is concerned that, despite guarantees of equality in the Constitution and in labour legislation, de facto inequalities continue in regard to the situation of women and their remuneration. The persistence of certain traditional attitudes and practices contributes to this inequality and discrimination in the workplace.

13. The Committee is particularly concerned at reports on the extent of trafficking in women in Macau and on the large numbers of women from different countries who are being brought into Macau for the purpose of prostitution. The Committee is extremely concerned at the inaction by the authorities in preventing and penalizing exploitation of these women and that, in particular, immigration and police officials are not taking effective measures to protect these women and to impose sanctions on those who are exploiting women through prostitution in violation of article 8 of the Covenant.

14. The Committee expresses concern at the low percentage of locally born residents holding senior positions within the public administration, thus raising the issue of implementation of article 25 of the Covenant.

15. The Committee is concerned that no firm arrangements have been made between the Governments of China and Portugal with regard to the nationality of the residents of Macau after 19 December 1999.

16. The Committee regrets that, despite the efforts that are being made by the authorities to disseminate information in regard to the rights recognized in the Covenant, the public in general, and non-governmental organizations in particular, were not adequately informed of the Human Rights Committee's consideration of the report. The Committee is also concerned that non-governmental organizations in Macau are not being encouraged to participate in programmes for the promotion and protection of human rights and that their cooperation is not sought in regard to the implementation of human rights.

E. Suggestions and recommendations

17. The Committee recommends that efforts be accelerated to introduce, as soon as possible, the use of the Chinese language in the courts at all levels and particularly in regard to court documents and decisions.

18. The Committee recommends that determined efforts be made to ensure a substantial rise in the percentage of locally born residents holding senior posts within the public administration and the judiciary.

19. The Committee further recommends that the Government should initiate or strengthen programmes aimed at providing assistance to women in difficult circumstances, particularly those coming from other countries who are brought into Macau for the purpose of prostitution. Strong measures should be taken to prevent this form of trafficking and to impose sanctions on those who exploit women in this way. Protection should be extended to women who are the victims of this kind of trafficking so that they may have a place of refuge and an opportunity to stay in order to give evidence against the person responsible in criminal or civil proceedings.

20. The Committee recommends that the provisions of article 4 of the Portuguese Assembly's resolution No. 41/92, whereby articles 12, paragraph 4, and 13 of the Covenant are not applicable to Macau as far as entry and departure of persons and the expulsion of foreigners from the Territory are concerned, be repealed as soon as possible.

21. The Committee recommends that human rights education be extended to members of the police and security forces, the legal profession and other persons involved in the administration of justice, with a view to making it a part of their regular training.

22. The Committee suggests that further efforts be undertaken to disseminate information in regard to the rights recognized in the Covenant and the activities carried out by the Committee. In particular, it recommends that the present Concluding Observations be widely disseminated among the public.

Notes

1/ At its 1584th meeting (fifty-ninth session), held on 10 April 1997.

2/ See documents CCPR/C/SR.1178/Add.1, SR.1200-1202 and SR.1453.